

Exhibit 5

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ---oOo---

4
5 PRESTON JONES, on behalf of
6 himself, all others similarly
7 situated, and the general
8 public,

9 Plaintiff,

10 vs.

No. 3:16-cv-00711-HSG

11 NUTIVA, INC.,

12 Defendant.
13 _____/

14
15 VIDEOTAPED DEPOSITION OF NEIL BLOMQUIST
16 EMERYVILLE, CALIFORNIA
17 THURSDAY, JULY 21, 2016
18
19
20
21

22 BY: ANDREA M. IGNACIO, CSR, RPR, CRR, CCRR, CLR ~
23 CSR LICENSE NO. 9830
24 JOB NO. 110207
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---oOo---

PRESTON JONES, on behalf of
himself, all others similarly
situated, and the general
public,

Plaintiff,

vs. No. 3:16-cv-00711-HSG

NUTIVA, INC.,

Defendant.

Videotaped Deposition of Neil Blomquist,
taken on behalf of the Plaintiff, at Regus,
1900 Powell Street, Suite 600, Emeryville,
California 94608, Pursuant to Notice, and before
me, ANDREA M. IGNACIO, CSR, RPR, CRR, CLR ~ License
No. 9830.

A P P E A R A N C E S:

FOR THE PLAINTIFF:

THE LAW OFFICE OF JACK FITZGERALD
By: JACK FITZGERALD, Esq.
3636 Fourth Avenue
San Diego, California 92103

LAW OFFICE OF PAUL K. JOSEPH
By: PAUL JOSEPH, Esq.
4125 W. Pt. Loma Boulevard
San Diego, California 92110

A P P E A R A N C E S: (Continued.)

FOR THE DEFENDANT:

AMIN TALATI & UPADHYE
By: SANJAY KARNIK, Esq.
100 S. Wacker Drive
Chicago, Illinois 60606

ALSO PRESENT: Anthony Hensley, Videographer

---oOo---

EMERYVILLE, CALIFORNIA
THURSDAY, JULY 21, 2016
9:58 A.M.

THE VIDEOGRAPHER: This is the start of media
labeled No. 1 of the video-recorded deposition of
Neil Blomquist.

In the matter of Preston Jones versus Nutiva,
Incorporated. In the United States District Court,
Northern District of California. Case
No. 3:16-CV-00711-HSG.

This deposition is being held at 1900 Powell
Street, in Emeryville, California, on July 21st, 2016,
at approximately 9:58 a.m.

My name is Anthony Hensley, and I am the
legal video specialist from TSG Reporting,
Incorporated, headquartered at 747 Third Avenue,
New York, New York.

The court reporter is Andrea Ignacio, in
association with TSG Reporting.

Counsel, will you please introduce
yourselves.

MR. JOSEPH: Paul Joseph for plaintiff.

1 A Yes.
 2 Q What does -- what is the revision date?
 3 A 8/26/14, I think. But it's small.
 4 MR. KARNIK: I think --
 5 MR. JOSEPH: I believe it's -- is it 9?
 6 MR. KARNIK: Yeah, I think --
 7 THE WITNESS: 9. Okay.
 8 MR. JOSEPH: Okay.
 9 Q Looking at the label itself, do you see on
 10 the front center of the panel where it says:
 11 "Organic Superfood."
 12 A Uh-huh.
 13 Q Does Nutiva use the term "organic superfood"
 14 to convey a health message?
 15 A I don't know. I don't know if that's their
 16 intention. I wasn't involved in how that term was
 17 used.
 18 Q But, you are aware that generally, Nutiva
 19 advertises its product -- this -- its Nutiva Coconut
 20 Oil as healthy?
 21 A Yes.
 22 Q And you said that -- well, regardless of
 23 Nutiva's intention, does the term "organic
 24 superfood" convey the message that the product is
 25 healthy?

1 world's most nourishing foods" convey a health
 2 message?
 3 A Yes.
 4 Q Going down to that same column to the header
 5 that says "Versatile," it says:
 6 "Ideal as a medium chain or a medium heat
 7 cooking oil, a nutritious substitute in baking, and is
 8 better than butter on bread, vegetables, or popcorn."
 9 Is that correct?
 10 A Yes.
 11 Q Does the phrase "a nutritious substitute"
 12 convey a health message?
 13 A For someone who is concerned about
 14 cholesterol, yes.
 15 Q Why do you say that?
 16 A Because it's got no cholesterol, and butter
 17 does.
 18 Q Going down to the opposite side of the panel,
 19 where it says:
 20 "Product of the Philippines."
 21 Can you read -- read that.
 22 A Yep.
 23 Q Can you read that out loud.
 24 A "Product of the Philippines."
 25 Then does that say Ven- -- Venezuela?

1 A I would say that some people would perceive
 2 it that way, yes.
 3 Q Do you perceive it that way?
 4 A I believe it's a healthy food, yes. So, to
 5 me, it reflects that it is a healthy food.
 6 Q Below that, it says:
 7 "100 percent less cholesterol than butter."
 8 Correct?
 9 A Correct.
 10 Q So, does that phrase convey that the Nutiva
 11 Coconut Oil is healthy?
 12 A If I'm concerned about cholesterol, yes.
 13 Q Are you aware that consumers are concerned
 14 about cholesterol?
 15 A Some are.
 16 Q If you'll look to the far left of the label.
 17 Can you read the first sentence where it says
 18 "Coconut" in green.
 19 A Uh-huh. You want me to read it?
 20 Q Yes.
 21 A "Coconut is one of the world's most
 22 nourishing foods. This creamy taste of the tropics is
 23 great for sautéing and baking, enhancing your favorite
 24 recipes, and body care."
 25 Q Does the sentence "coconut is one of the

1 Q Vanuatu?
 2 A "India and/or Sri Lanka."
 3 Q Are those the current place -- places that
 4 Nutiva sources its coconut oil from?
 5 A Must be one of those three -- four.
 6 Q Going back to the --
 7 MR. KARNIK: Well, let me just object to the
 8 use of the question currently. It just refers --
 9 MR. JOSEPH: Oh, sorry.
 10 MR. KARNIK: -- to the time of the revision
 11 is when it says that.
 12 MR. JOSEPH: Correct.
 13 THE WITNESS: It's also done to give them the
 14 flexibility that, if it's being sourced from one of
 15 those four countries, they don't have to change their
 16 label.
 17 MR. JOSEPH: Okay.
 18 Q Going back to what you said about butter not
 19 containing cholesterol, is the phrase "better than
 20 butter" -- is what that -- is what that phrase is
 21 getting at, that health difference, is because of
 22 cholesterol?
 23 A I would say it would be that, in anyone who
 24 is wanting to avoid animal products, like a
 25 vegetarian.

Page 138

1 Q Okay. Looking at the nutrition facts box, do
2 you -- do you see where it says "serving size"?
3 A Yes.
4 Q What is the serving size?
5 A One tablespoon.
6 Q Why is that the serving size?
7 A That's what is the guidelines for fats and
8 oils.
9 Q Is that true for all fats and oils?
10 A Yes.
11 Q Do the same labeling reg- -- regulations
12 pertain to all fats and oils?
13 A As far as I know, yes.
14 Q You're not aware of any differences
15 between -- any labeling regulation differences between
16 what's required of a coconut oil and, say, a
17 shortening?
18 A If the shortening is a single ingredient fat,
19 it would be the same.
20 Q Okay. When you joined Nutiva, you said you
21 familiarized yourself with the products; correct?
22 A Yes.
23 Q Were you already familiar generally with
24 coconut oil?
25 A Yes.

Page 140

1 trying to convey Nutiva as a company with a mission
2 toward health and environmental protection and social
3 justice.
4 Q Do they try to convey that the Nutiva Coconut
5 Oils are healthy?
6 A Yes.
7 Q Does Nutiva do anything to ensure consistency
8 of its marketing messaging across different
9 advertising mediums?
10 A I think they do.
11 Q What would -- what do you believe they do?
12 A I think that the main subtitle of their
13 brand, "Nurture Vitality," is the main feature of that
14 consistent message that is reflective of their values
15 and mission as a company.
16 Q Does the phrase "Nurture Vitality" convey a
17 health message?
18 A Yeah.
19 Q What -- in addition to "Nurture Vitality,"
20 what are some consistent, I guess, selling points of
21 Nutiva's marketing strategy for coconut oils?
22 A That the company stands for protecting nature
23 and minimizing processing in the food chain,
24 supporting small farmers, protecting workers' rights,
25 all those things that reflect their values.

Page 139

1 Q Were you aware that Nutiva's Virgin Coconut
2 Oil contained 14 grams of fat per serving?
3 A All oil does. Yes.
4 Q And that it contains 13 grams of saturated
5 fat per serving?
6 A I'm aware of that, yeah.
7 Q Were you aware of that at the time you
8 joined -- or started providing consulting services to
9 Nutiva?
10 A Yes.
11 Q Okay. You can put that away for now. All
12 right.
13 Does Nutiva have a promotional strategy
14 regarding its coconut oil products?
15 A I'm sure they do.
16 Q Do you know how it was developed?
17 A I don't.
18 Q Do you know what its key features are?
19 A To my knowledge, their main, as I mentioned
20 before, vehicles for promoting are through the retail
21 programs and through social media.
22 Q Do you know what the main message that Nutiva
23 is trying to convey through the labeling of its
24 Coconut Oil products?
25 A I think the main message is that they're

Page 141

1 Q Does the phrase 0 -- "100 percent less
2 cholesterol than butter," is that a key feature?
3 A On some products, like coconut oil.
4 Q Is the term "organic superfood" a key feature
5 of Nutiva's message for its coconut oils?
6 A Yes. It's on the front panel, so it's
7 certainly a key message.
8 Q Is the message that coconut oil is one of the
9 most -- most nourishing world's foods a key message?
10 MR. KARNIK: Object to form. It's just --
11 MR. FITZGERALD: Just rephrase.
12 MR. KARNIK: Just rephrase the way it's
13 stated. Just -- just bad form.
14 MR. JOSEPH: Q. Is the message that coconut
15 is one of the world's most nourishing foods a key
16 message?
17 A I'd say it's a secondary message. Otherwise,
18 it would be on the front panel. When you market,
19 those messages like that appearing on the side panel
20 are not the primary messages.
21 Q Do you believe that that phrase influences
22 consumers' purchasing decisions?
23 A Probably.
24 Q Do you believe the phrase "ideal as a medium
25 heat cooking oil, a nutritious substitute in baking,

Page 142

1 and is better than butter on bread, vegetable oils, or
2 popcorn" influences consumers' purchasing decisions?

3 A Probably.

4 Q Do you -- okay.

5 What does Nutiva do to verify that its
6 products are healthy?

7 A Do to verify?

8 I think that their basic principle is that
9 everything they do is organic, and everything that
10 they do has minimal processing, which equates to
11 higher levels of nutrition, in my opinion.

12 Q Are there some foods that are mainly
13 processed but still unhealthy?

14 A Yeah, probably. Sugar would be one of those.

15 Q Does -- so just saying that a food is
16 minimally processed and organic is not sufficient to
17 ensure that it's --

18 A Not for --

19 Q -- healthy?

20 A Not for everything, no.

21 Q So, does Nutiva do anything else to verify
22 that their products are healthy?

23 A Well, I think the other sourcing principles
24 they have, which is non-GMO, chemical-free farming,
25 all those things are part of their -- their goal to

Page 143

1 provide as nutritious, minimally processed food as
2 possible.

3 Q Is non-GMO minimally processed sugar healthy?

4 A Is non-GMO minimally processed sugar healthy?

5 In small quantities it's fine, but it can be
6 easily overconsumed and cause health problems.

7 Q Can the Nutiva Coconut Oils be overconsumed
8 to cause health problems?

9 A Anything can.

10 Q Are you aware of whether Nutiva or any of its
11 directors or managers consulted with any doctors or
12 nutritionists when selecting which products to sell?

13 A I don't know the answer to that.

14 Q Does Nutiva -- are you aware of any
15 substantiation for Nutiva's representations that the
16 coconut oils are healthy?

17 A I don't know what they use -- have used to
18 substantiate that, no.

19 Q Are you aware of Nutiva possessing any
20 scientific studies regarding health effects of Coconut
21 Oil?

22 A I'm not aware of it, no.

23 Q Have you any -- ever discussed the health
24 effects of coconut oils with anyone at Nutiva?

25 A No.

Page 144

1 Q Do you consider conveying the health and
2 nutritional benefits of Nutiva's Coconut Oils to its
3 consumers to be important?

4 A Yes.

5 Q Does this influence the purchasing decisions
6 of Nutiva's consumers?

7 A Yes.

8 Q Are Nutiva's -- Nutiva purchasers willing to
9 pay more for the Nutiva Coconut Oils because they're
10 marketed as -- as being healthy?

11 A I'm sure that there are some, yes.

12 MR. JOSEPH: Let's take a short break.

13 THE VIDEOGRAPHER: The time is 2:33.
14 We are off the record.

15 (Recess taken.)

16 THE VIDEOGRAPHER: The time is 2:41.
17 We are back on the record.

18 (Document marked Exhibit 2
19 for identification.)

20 MR. JOSEPH: Before you is what's marked as
21 Blomquist Exhibit 2.

22 Q Do you recognize what that is?

23 A Yes.

24 Q Is that the -- a label of Nutiva's Virgin
25 Coconut Oil?

Page 145

1 A Yes.

2 Q Let me direct your attention to where it says
3 "Revision Date."

4 A Yes.

5 Q Can you read the revision date for us.

6 A 1/13/15, it looks like.

7 Q Do you believe that this is the current
8 version of the Nutiva Coconut Oil label?

9 A If you say so.

10 Q I'm asking you.

11 A I don't know.

12 Q Okay. Are you aware of a change to the
13 Nutiva Coconut Oil label subsequent to --

14 A Well, I wasn't --

15 Q -- January of 2015?

16 A I wasn't aware of it or involved. But I can
17 look at it side by side and compare it.

18 Q But you know -- you're not aware of any
19 changes --

20 A No.

21 Q -- subsequent to January of 2015?

22 A No.

23 Q Okay. In the upper right-hand portion, can
24 you go three down -- four down -- four lines down?

25 A Uh-huh.

Page 150

1 message?

2 A Yes.

3 Q Do you see under the word "Nutiva" where it
4 says "Nurture Vitality"?

5 A Yes.

6 Q Does that appear to be a primary message?

7 A Yes, for the brand it does.

8 Q On the very right of the label near the top,
9 do you see it -- where it says:
10 "0 grams trans fat."

11 A Yes.

12 Q With regard to that claim, where it's placed,
13 is Nutiva required to place that claim there?

14 A Not a requirement.

15 Q So, why do they do it?

16 A Statement of fact.

17 Q Isn't it already stated in the nutrition box,
18 trans fat, 0 grams?

19 A Yes.

20 Q Does the fact that Nutiva has gone out of its
21 way to place it additionally on the label indicate
22 that it's -- it believes it's important to consumers?

23 MR. KARNIK: I'll object to the form in that
24 it's gone out of its way.

25 But you can answer.

Page 151

1 THE WITNESS: So what's the question?

2 MR. JOSEPH: Q. Does the fact that Nutiva
3 has placed the claim "0 grams trans fat" on the label
4 a second time, when it was not required to indicate
5 that Nutiva considers that information important to
6 consumers?

7 A Yes.

8 Q And you believe that some consumers are
9 willing to pay more for consume -- for products
10 labeled "0 grams trans fat"?

11 A I think some consumers, yeah.

12 Q Moving down two lines, do you see where it
13 says "non-hydrogenated"?

14 A Yes.

15 Q Is Nutiva required to place that claim on its
16 label?

17 A No.

18 Q Does the fact that Nutiva placed the claim
19 "non-hydrogenated" on its coconut virgin -- or excuse
20 me -- Refined Coconut Oil label indicate that -- to
21 you that Nutiva believes that claim is important to
22 consumers?

23 A Again, it's a statement of fact that I think
24 is important to some consumers.

25 Q Okay. I'm done with this exhibit.

Page 152

1 Mr. Blomquist, I'd like to draw your
2 attention to Exhibits 1 and 2.

3 A (Witness complies.)

4 Q Do you note -- notice a color difference
5 between the two exhibits?

6 A Not really.

7 Q Do you see where it says "Virgin"?

8 A Yep.

9 Q Do you see how there's two separate colors --

10 A Yep.

11 Q -- distinct colors between the label
12 versions?

13 A Uh-huh.

14 Q Do you know why that change was made?

15 A No idea.

16 Q Would you be surprised to learn that that
17 change was made because consumers were confusing the
18 refined and virgin coconut oil products?

19 A You're asking me if I was surprised?

20 Q Would you be surprised to find out?

21 A No. Nothing surprises me about consumers.

22 Q All right.

23 MR. KARNIK: I just want to make sure you
24 asked -- you wanted to ask that question correctly.
25 These are both virgin products. Okay.

Page 153

1 MR. JOSEPH: Right.

2 MR. KARNIK: Yeah. Okay.

3 MR. JOSEPH: Do you have the rest?
4 (Documents marked Exhibits 4 - 5
5 for identification.)

6 MR. JOSEPH: You're looking at what's marked
7 Blomquist Exhibit 4.

8 Q Do you recognize what's pictured?

9 A Yes.

10 Q And what is pictured?

11 A Coconut Oil label -- old -- old -- previous
12 version for Nutiva's Coconut Oil versions.

13 Q How are you familiar with these versions?

14 A I remember them from when they first put the
15 product out. It was before the rebranding.

16 Q Do the pictures fairly and accurately portray
17 the front of the previous Nutiva Coconut Oil labels?

18 A Yes.

19 Q Looking at the jar on the left, do you see
20 where it says:

21 "A deliciously healthy cooking oil."

22 A Yes.

23 Q "Better than butter."

24 A Yes.

25 Q Do you believe that Nutiva, with regard to

1 its coconut oils, tries to convey a message that its
2 coconut oils are healthier than butter?

3 A Yeah.

4 MR. KARNIK: Ob- -- let me object to the form
5 in the current tense, as we're talking about a label
6 from -- that doesn't exist currently.

7 But you can continue.

8 MR. JOSEPH: Q. Looking at the label on the
9 right, do you notice how the phrase "a deliciously
10 healthy cooking oil" has been removed?

11 A Yeah.

12 Q Do you see where it says:

13 "100 percent less cholesterol than butter."

14 A Yes.

15 Q Well, first of all, where is -- the one on
16 the left where it says "healthy cooking oil," do you
17 know when that version of label was in use?

18 A I don't.

19 Q Did it precede the version of label on the
20 left -- on the right?

21 A I don't recall which was first and which was
22 second.

23 Q Okay. Why do you think such a change between
24 the labels would be made?

25 A Somebody had an idea in the shower that

1 morning.

2 Q You don't believe that Nutiva has -- that
3 decision would be based on any sort of consumer
4 research to say that one claim was more effective than
5 others?

6 A I doubt it.

7 Q In your mind, is the claim "100 percent less
8 cholesterol than butter" more effective with consumers
9 than the claim "a deliciously healthy cooking oil"?

10 A It may influence some people. I think it
11 kind of conveys a similar message.

12 Q Previously, you stated that -- or we were
13 discussing whether it could be unhealthy to consume
14 too much coconut oil.

15 Do you believe it is possible to con- -- it
16 would be unhealthy to consume too much coconut oil?

17 A Yeah, if that's all you ate, sure. If that's
18 the only fat you ate, it could be unhealthy.

19 Q Could it be unhealthy at a lower level?

20 A I think that, at a low level, if consumed
21 with other healthy fats, it's a healthy product for
22 the average individual.

23 Q How much coconut oil on a daily basis is too
24 much?

25 A I don't know. I'm not a nutrition expert to

1 really be able to answer that with authority.

2 Q In your personal opinion?

3 A If I were choosing it for myself, you know, I
4 would say that including this in my diet, in balance
5 with other essential fatty acids, it would be a
6 healthy product to eat. I mean, all within the limits
7 of my body weight and age for the amount of fat I
8 should consume.

9 Q Does Nutiva -- or does coconut oil provide a
10 significant amount of essential fatty acids?

11 A It's got a small -- very small amount of
12 omega-6, which is the only essential fatty acid that
13 it has.

14 Q How small of a percentage?

15 A It's less than 1 or 2 percent.

16 Q Is that less than contained in olive oil?

17 A Olive oil has got a little bit more essential
18 fatty acid, but not much.

19 Q Is it less than what's contained in butter?

20 A Butter, as far as I know, has almost zero
21 essential fatty acid.

22 Q Okay. Do you eat coconut oil?

23 A Yes.

24 Q How much?

25 A It varies, but we use it at home for

1 sautéing, making popcorn, a variety of things in the
2 kitchen. This and olive oil are probably our two most
3 used oils at home.

4 Q Do you --

5 A Also flax oil, which is the best source of
6 essential fatty acid.

7 Q Does flax oil contain more essential fatty
8 acids than coconut oil?

9 A Yes.

10 Q Do you consider flaxseed oil to be more
11 healthier than coconut oil?

12 A If you are consuming fat for essential fatty
13 acids, yes.

14 Q In general?

15 A I'd say in general, from a -- the consumption
16 of -- if you're consuming fat to get essential fats
17 into your diet, yes. The answer is, it's healthier.

18 Q Does consuming coconut oil have detrimental
19 effects on health?

20 A If overconsumed, it can be. So can flax oil
21 if it's overconsumed.

22 Q Does it have negative effects on health even
23 if consumed at low levels?

24 A I don't know that that's a scientific fact or
25 not. I don't have enough nutritional background to